

responded to within the reasonable time limits specified in the request, unless some other cost-basis shall have been substituted in relation to the charges determined by the Director or otherwise provided for under the provisions of Condition 13 of this Licence, in which case the Director may determine appropriate arrangements for altering the cost-base in order to conform with those provisions which shall accordingly apply to any determination made under sub-paragraph (a) of this paragraph on or after the date on which such alteration takes effect;

- (ii) subject to sub-paragraph (d) (ii), categorise the Licensee's reasonable costs incurred in providing Portability as System Set-Up Costs, Per Line Set-Up Costs, Administrative Costs and, for the purposes of sub-paragraph (c) (ii) of this paragraph, Additional Conveyance Costs.
- (c) Any determination of Standard Portability Charges made under sub-paragraph (a) shall be subject to the following provisions:
 - (i) the Licensee's System Set-Up Costs shall not be recovered;
 - (ii) subject to sub-paragraph (iii), the Licensee's Additional Conveyance Costs shall not be recovered by way of a charge determined under this Condition after 31 October 1997, provided that until that date the Licensee may by means of a Standard Portability Charge, recover an amount representing half the difference between -
 - (aa) its Additional Conveyance Costs during the period between commencing the provision of Portability and 31 October 1997; and
 - (bb) such Additional Conveyance Costs as the Director determines that it would have incurred if Call Drop-Back had been in operation for the whole of that period;
 - (iii) any Additional Conveyance Costs other than the amount recoverable by virtue of sub-paragraph (ii) above shall be treated in the same manner as costs recoverable by charges for interconnection made and determined under and in accordance with Condition 13 of this Licence.
- (d) The following provisions shall also apply with respect to any determination made under sub-paragraph (a):
 - (i) the Director may determine that a cost is not reasonable if he considers that the Licensee could at the relevant time have used lower cost methods in implementing the relevant aspect of

Portability and in that event the Director may disallow the item of cost in question in whole or in part as appropriate;

- (ii) in respect of any individual item of cost the Director may determine into which category of cost it falls, and if he considers that any such item of cost cannot reasonably be categorised as System Set-Up Costs, Per Line Set-Up Costs, Administrative Costs or Additional Conveyance Costs, the Director may determine whether and to what extent the Licensee may reasonably recover such costs;
- (iii) in the event that, in making any determination under subparagraph (a), the Director considers that the cost basis of any Standard Portability Charge in any preceding period has been inaccurately estimated, he shall make such adjustment to such Charge determined by him as he considers is appropriate for rectifying the matter.

34C.3 Before making any determination under paragraph 34C.2, the Director shall consult with Interested Parties and take into account any representations made by them.

34C.4 For the purposes of this Condition:

“Additional Conveyance Costs” means any costs associated with resources used in

- (a) effecting the switch-processing required to set up each ported call, and
- (b) providing the switch and transmission capacity whether in the local or trunk exchange for any part of the duration of each ported call

additional to the costs of conveyance of non-portcd calls from the Applicable Systems to the Operator’s system;

“Administrative Costs” means those costs, similar in nature to Per Line Set Up Costs, which are incurred by the Licensee when a Customer, retaining a Number allocated by the Licensee, moves from one location to another, whether at the same time as that Customer takes a Directly Provided Telecommunication Service from a Qualifying Operator or thereafter;

“Call Drop-Back” means the process whereby signals passing between the Licensee’s local exchange serving the Porting Customer and the Licensee’s trunk exchange enable Messages conveyed by the Applicable Systems to be routed to the system of the relevant Qualifying Operator and thence to the Porting Customer’s system, releasing the call path between the local and trunk exchanges once signalling is completed;

“Customer” means a person provided with a Directly Provided Telecommunication Service by the Licensee or an Operator as the case may be;

“Directly Provided Telecommunication Service” means a telecommunication service provided directly to any Customer by the Licensee (or the Operator) by means of the connection at the Network Termination Point in the case of the Licensee (or the equivalent point in the Operator’s system) between the Customer’s system and the Licensee’s Applicable Systems (or the Operator’s system);

“Functional Specification” means a document published from time to time by the Director following consultation with the Licensee and Interested Parties which specifies technical and other principles which are intended to enable the efficient implementation and utilisation of Portability;

“Interested Parties” has the same meaning as in Condition 16B;

“Number” has the same meaning as in Condition 34B;

“Operator” has the same meaning as in Condition 13;

“Per Line Set-Up Costs” means the costs of the Licensee in providing switching and administration with respect to each Number ported;

“Portability” means a facility which may be provided by the Licensee to an Operator and which enables

- (a) a Customer to whom Directly Provided Telecommunication Services are provided by reference to a Number allocated by or on behalf of the Licensee to retain that Number irrespective of the identity of the person providing such Services; and
- (b) the resumption of the provision of such Services by the Operator to a Customer
 - (i) to whom Directly Provided Telecommunication Services have been provided by reference to a Number allocated by or on behalf of that Operator and
 - (ii) who has as a result of the provision of Reciprocal Portability obtained such Services from the Licensee by reference to that Number;

“Porting Customer” means a former Customer of the Licensee who has been allocated a Number by or on behalf of the Licensee and who receives Directly Provided Telecommunication Services from any Qualifying Operator by means of the same Number;

“Reciprocal Portability” means a facility provided by an Operator to the Licensee and which enables

- (a) a Customer to whom Directly Provided Telecommunication Services are provided by reference to a Number allocated by or on behalf of the Operator to retain that Number irrespective of the identity of the person providing such Services; and
- (b) the resumption of the provision of such Services by the Licensee to a Customer -
 - (i) to whom Directly Provided Telecommunication Services have been provided by reference to a Number allocated by or on behalf of the Licensee; and
 - (ii) who has as a result of the provision of Portability obtained such services from an Operator by reference to that Number;

“Standard Portability Charges” means the charges payable to the Licensee by each Qualifying Operator for the provision of Portability to it by the Licensee, each such Operator paying the same charge as determined by the Director under this Condition with respect to each category of cost;

“System Set-Up Costs” means costs of the Licensee incurred -

- (i) in the course of making network and system modifications, configurations or reconfigurations, including adapting or replacing software;
- (ii) in the course of testing functionality within the Applicable Systems and in conjunction with any Qualifying Operator’s systems;

anywhere within the Licensed Area thereby establishing the technical and administrative capability to provide Portability.

CONDITION 35

PROHIBITION OF LINKED SALES

35.1 The Licensee shall not make it a condition of:

- (a) providing any telecommunication service (other than a telecommunication service comprised in a Relevant Service) by means of or in relation to any of the Applicable Systems;
- (aa) providing any Relevant Service;
- (b) supplying any telecommunication apparatus for connection to any of the Applicable Systems; or
- (c) connecting any other system or apparatus to any of the Applicable Systems;

that any Relevant Person should acquire from the Licensee or from any other person specified or described by the Licensee:

- (i) any telecommunication service other than the telecommunication service requested save where that service cannot be provided without the provision of that other telecommunication service; or
- (ii) any telecommunication apparatus not incorporated in the Applicable Systems save where the telecommunication service requested cannot otherwise be provided or the telecommunication apparatus requested cannot otherwise be used.

35.2 Except where the Director has agreed otherwise, the Licensee shall not do any one or more of the things described in sub-paragraphs (a), (aa), (b) and (c) of paragraph 35.1 together with any other of those things in a manner or for charges or on terms or conditions more favourable than would be available for doing that thing or those things without that other thing or those other things.

35.3 Notwithstanding paragraphs 35.1 and 35.2 the Licensee may:

- (a) impose such terms and conditions as are permitted terms and conditions under Condition 13;
- (b) where it supplies as part of the same transaction or interconnected series of transactions two or more items of telecommunication apparatus for connection to any of the Applicable Systems, offer quantity discounts or more favourable terms and conditions in respect of quantity in relation to such apparatus which it so supplies whether those items of apparatus are of the same or different descriptions;

(c) where it provides by means of or in relation to any of the Applicable Systems and as part of the same transaction or an interconnected series of transactions, two or more telecommunication services which are of the same description or which are so related as to permit economies of scale when they are provided together, offer such quantity discounts or such more favourable terms and conditions in respect of quantity for those services as have been published in accordance with Condition 16.3;

(d) where prior to 1 January 1985 it provides to any person telecommunication services by means of:

(i) a single direct Exchange Line forming part of the public switched telephone network; or

(ii) more than one such Line each terminating on a separate item of Network Termination and Testing Apparatus;

make it a condition of the provision, before that date but not thereafter, of those services that that person should acquire one Instrument supplied, installed and Brought into Service by the Licensee and in respect of which Maintenance Services are provided by the Licensee (the prime instrument) and may require that at all times when any such direct Exchange Line is used for conveying messages to or from the Served Premises occupied by that person the prime instrument is and continues to be connected to that Line by means of apparatus supplied, installed, and Brought into Service by the Licensee and that Maintenance Services are provided in respect of it by the Licensee;

(e) where a telecommunication system is a Limited Maintenance Telecommunication System or contains any item of Limited Maintenance Telecommunication Apparatus impose such reasonable terms and conditions as are necessary in connection with the provision of Maintenance Services in respect of it by the Licensee; or

(f) where the Director consents, impose such other conditions of the kind referred to in paragraph 35.1 as are incidental to the provision of the telecommunication service or the supply of the apparatus requested by the Relevant Person.

35.4 In this Condition:

“Instrument” means either:

(a) where no switching apparatus is connected to the Line, a Telephone; or

(b) where switching apparatus is connected to the Line, that switching apparatus together with a Telephone whether included in that

apparatus or not and any other Telephone comprised in such apparatus; and

“Relevant Person” means a person:

- (a) who requests that a telecommunication service be provided by means of or in relation to any of the Applicable Systems, or for whom or on whose behalf such a telecommunication service is provided; or
- (b) who requests that telecommunication apparatus be supplied or to whom or on whose behalf such apparatus is supplied; or
- (c) who requests that any telecommunication system or telecommunication apparatus be connected to any of the Applicable Systems or for whom or on whose behalf such a system or such apparatus is so connected.

CONDITION 36

PROHIBITION OF CERTAIN EXCLUSIVE DEALING ARRANGEMENTS

- 36.1 The Licensee shall not, except with the written consent of the Director, make the acquisition from any person in the United Kingdom by the Licensee or any of its Wholly Owned Subsidiaries or the installation or servicing by any person in the United Kingdom for it or any such Subsidiary of any telecommunication apparatus of any description conditional upon agreement:
- (a) to supply to the Licensee or to supply or not to supply to any other person apparatus of a different description;
 - (b) to provide to the Licensee or to provide or not to provide to any other person any telecommunication service of a different description; or
 - (c) to transfer to the Licensee or to any other person any interest in Industrial or Intellectual Property with a view to restricting unreasonably the freedom of the supplier of the apparatus or the provider of the service in question to exploit his Industrial or Intellectual Property in order to confer on the Licensee or some other person an unfair competitive advantage.
- 36.2 If the Director is satisfied that persons in the United Kingdom, who are not genuinely willing to give to the Licensee or to any of its Wholly Owned Subsidiaries the sole right to supply to customers telecommunication apparatus supplied by those persons, are being so required by the Licensee then the Director may direct the Licensee to comply with the condition in paragraph 36.3.
- 36.3 The said condition is that the Licensee shall not, except with the written consent of the Director, make the acquisition of telecommunication apparatus, or of telecommunication apparatus specified by the Director or of a description so specified, by the Licensee or any of its Wholly Owned Subsidiaries from any person in the United Kingdom or any such person specified by the Director or such persons of a description specified by the Director conditional upon the agreement of the supplier not to supply to any other person apparatus of the same description as that to be supplied to the Licensee or to a Wholly Owned Subsidiary.
- 36.4 Notwithstanding paragraph 36.1 or any direction under paragraph 36.2, the Licensee shall be free:
- (a) to agree with any person that that person will supply to the Licensee, or one of its Wholly Owned Subsidiaries, alone telecommunication apparatus of any description which is distinguishable (by any means other than ones which account for a disproportionate share of the cost of that apparatus) by its external appearance, or by any marking or similar attribute, from other apparatus of the same description, and

which is or is intended to be thereby associated with the Licensee or that Subsidiary;

- (b) to require that other telecommunication apparatus should be supplied or another telecommunication service should be provided with or in connection with any apparatus or service where the supply of that other apparatus or the provision of that other service is reasonably related to that supply or provision;
- (c) to require the transfer to the Licensee or any of its Wholly Owned Subsidiaries of any interest in Industrial or Intellectual Property which the Director agrees is necessary or desirable to facilitate the running of any of the Applicable Systems;
- (d) to dispose of any interest in Industrial or Intellectual Property owned by the Licensee or any of its Wholly Owned Subsidiaries free from all encumbrances and restrictions of whatsoever nature arising out of or under this Licence;
- (e) to require the transfer to the Licensee or any of its Wholly Owned Subsidiaries by any person of any interest in Industrial or Intellectual Property arising out of any work done in pursuance of any agreement made between the Licensee or any of its Wholly Owned Subsidiaries and that person for any research or development to be carried out by him, unless the Director otherwise directs;
- (f) to require the transfer to the Licensee or any of its Wholly Owned Subsidiaries or any other person of any interest in Industrial or Intellectual Property to the extent that that is reasonably necessary for the purpose of enabling the Licensee to secure alternative sources of supply of telecommunication apparatus; or
- (g) to require any person who supplies telecommunication apparatus or who provides telecommunication services to enter into an agreement of the kind referred to in paragraph 36.1, 36.2 or 36.3 where the Licensee or any of its Wholly Owned Subsidiaries makes available research, design or development work or where the Licensee or such Subsidiary agrees to finance such work on terms that an agreement of that kind will be entered into.

36.5 In this Condition "Industrial or Intellectual Property" has the same meaning as in Condition 39.

CONDITION 37

REQUIREMENT TO PROVIDE ITEMISED INFORMATION

37.1 If the Licensee provides to any person by means of any part of the Applicable Systems any telecommunication service as part of a transaction involving:

- (a) the supply to that person of any telecommunication apparatus; or
- (b) the provision to that person of any other telecommunication service (including the Bringing into Service of any apparatus or system) provided otherwise than by means of any of the Applicable Systems;

then it shall specify in any quotation or any invoice relating to that transaction the charge or charges for each such service separately from the charge or charges for apparatus.

37.2 The Licensee shall not be obliged under paragraph 37.1 to specify charges for telecommunication services separately in invoices until 1 July 1987 or it has installed the necessary billing system in the area in which the service to which the invoice relates is provided whichever is the sooner.

37.3 Where the Licensee provides to any person a Relevant Service, paragraph 37.1 shall be deemed to be satisfied in respect of each telecommunication service comprised in that Relevant Service if the Licensee specifies in any quotation or any invoice relating to that Relevant Service the aggregate charge for that Relevant Service.

CONDITION 38

CODE OF PRACTICE ON THE CONFIDENTIALITY OF CUSTOMER INFORMATION

- 38.1 The Licensee shall take all reasonable steps to ensure that those of its employees who are engaged in the Systems Business observe the provisions of a Code of Practice which:
- (a) specifies the persons to whom they may not disclose information about a customer of the Licensee which has been acquired in the course of the Systems Business without the prior consent of that customer;
 - (b) regulates the information about any such customer which may be disclosed without his consent; and
 - (c) restricts disclosure of information relating to the testing of apparatus referred to in Condition 41.
- 38.2 The Licensee shall within three months of the date on which this Licence enters into force submit a draft of the Code of Practice to the Director for his approval and if the Licensee and the Director fail to agree on the provisions of the Code they shall be determined by the Director.
- 38.3 This Condition is without prejudice to the duties at law of the Licensee towards its customers.

CONDITION 38A

CODE OF PRACTICE ON THE CONFIDENTIALITY OF CUSTOMER INFORMATION RELATING TO SUPPLEMENTAL SERVICES BUSINESS

- 38A.1 The Licensee shall take all reasonable steps to ensure that those of its employees who are engaged in the Supplemental Services Business observe the provisions of a Code of Practice which:
- (a) specifies the persons to whom they may not disclose information about a customer of the Licensee or that customer's business which has been acquired in the course of the Licensee's business of providing telecommunication services comprised in Relevant Services without the prior consent of that customer; and
 - (b) regulates the information about any such customer or his business which may be disclosed without his consent.
- 38A.2 The Licensee shall within three months of 30 April 1987 confirm in writing to the Director that it has taken all reasonable steps to ensure that those of its employees who are engaged in the Supplemental Services Business are observing the provisions of a Code of Practice.
- 38A.3 In this Condition, "Code of Practice" means:
- (a) any Model Code of Practice issued by the Director; or
 - (b) where the Director so agrees, any Code of Practice submitted by the Licensee to the Director.
- 38A.4 This Condition is without prejudice to the duties at law of the Licensee towards its customers.
- 38A.5 Notwithstanding anything contained in Condition 38, any incidental amendments to the Code of Practice previously approved by the Director under Condition 38.2 which may be requisite in consequence of the Code of Practice referred to in this Condition may be made by the Licensee without obtaining the Director's approval, but the Licensee shall not otherwise make any amendments to that Code of Practice without the Director's approval.

CONDITION 39

INTELLECTUAL PROPERTY

39.1 Where it appears to the Director that any Relevant Intellectual Property Right has been, is being or is likely to be exercised (whether by the Licensee or by any other person in pursuance of an agreement, arrangement or concerted practice to which the Licensee is a party) so as to prevent:

- (a) any telecommunication system or telecommunication apparatus, which may lawfully be connected to any of the Applicable Systems, from being so connected either at all or on reasonable charges, terms and conditions; or
- (b) any service, which may lawfully be provided by means of any of the Applicable Systems, from being so provided or obtained either at all or on reasonable charges, terms and conditions;

he may direct the Licensee in writing in accordance with paragraph 39.2 or 39.3.

39.2 Where the exercise of the Relevant Intellectual Property Right prevents a product from being made available either at all or on reasonable charges, terms and conditions to the person wishing to make such a connection or to provide or obtain such a service, the Director may direct the Licensee to take such steps as are within the power of the Licensee and are, in the opinion of the Director, reasonable and necessary in all the circumstances to secure that the product is made available to that person on charges, terms and conditions acceptable to that person or which (in default of agreement) are, in the opinion of the Director, reasonable to enable such connection to be made or such service to be provided or obtained.

39.3 Where paragraph 39.1 applies in circumstances other than those described in paragraph 39.2, the Director may direct the Licensee to take such steps as are within the power of the Licensee and are, in the opinion of the Director, reasonable and necessary in all the circumstances to secure that the person wishing to make such a connection or to provide or obtain such a service is enabled to make use of the Relevant Intellectual Property Right, for the purpose of making the connection or of providing or obtaining the service, upon charges, terms and conditions acceptable to that person or which (in default of agreement) are, in the opinion of the Director, reasonable for such purpose.

39.4 In this Condition:

“Relevant Intellectual Property Right” means any right, which is wholly or partly controlled by a member of the Licensee’s Group, in Industrial or Intellectual Property or is subject to an agreement, an arrangement or concerted practice to which a member of the Licensee’s Group is a party; and

“Industrial or Intellectual Property” includes, without prejudice to its generality, patents, designs, know-how and copyright.

- 39.5** Nothing in this Condition shall require the Licensee to do anything which would contravene the terms of or would result in revocation of a licence or assignment of a Relevant Intellectual Property Right granted or made to a member of the Licensee’s Group on or before the date on which this Licence enters into force or which would result in a member of the Licensee’s Group incurring any liability under such a licence or assignment.

CONDITION 40

PROHIBITION OF NON-STATUTORY TESTING REQUIREMENTS

- 40.1 Where the Director notifies the Licensee in writing that this Condition applies in circumstances specified or described in the notification, the Licensee shall not in such circumstances (whether in pursuance of any agreement, arrangement, concerted practice or otherwise) make it a condition of any telecommunication system or telecommunication apparatus being connected or kept connected to any of the Applicable Systems or of any telecommunication service being provided by means of any of the Applicable Systems that any such system, apparatus or service shall obtain the approval of, comply with any standard designated by, or pass any test set by, any person other than the Secretary of State or the Director or by a person appointed under section 25 of the Act, except insofar as the Director otherwise agrees.
- 40.2 Nothing in this Condition shall prevent the Licensee from requiring the passing of any test which the Director agrees is reasonably necessary or desirable for the purpose of determining whether:
- (a) any telecommunication apparatus or telecommunication system which is, or is to be, connected to any of the Applicable Systems is authorised to be so connected; or
 - (b) notwithstanding such authorisation, the Licensee is obliged to connect it or permit its connection to the Applicable Systems.

CONDITION 40A

REQUIREMENT TO PROVIDE MEANS OF ACCESS TO THE APPLICABLE SYSTEMS

- 40A.1 Subject to paragraph 40A.2 the Licensee shall ensure within 12 months from the date on which an OSI Standard is specified by the Director, where the Licensee provides a Relevant Service means of access to which are capable, in whole or in part, of being provided in conformance with that OSI Standard, that the Relevant Applicable System is so run that it provides means of access, which conform to that OSI Standard, to that Relevant Service.
- 40A.2 Notwithstanding paragraph 40A.1, where the Licensee provides a Relevant Service means of access to which conform to an OSI Standard and that OSI Standard is subsequently replaced by another OSI Standard, the Licensee shall ensure that the Relevant Applicable System is run so as to provide within 3 years means of access to the Relevant Service which conform to that other OSI Standard.
- 40A.3 If the Director so requests, the Licensee shall furnish to the Director, in such manner and at such times as the Director may request, at any time after the expiry of:
- (a) the period of 90 days beginning on the date on which the Licensee first provides a Relevant Service; or
 - (b) the period described in paragraph 40A.1;
- whichever is the later, such information as is reasonably necessary to show whether the Relevant Applicable System providing means of access to the Relevant Service adequately conforms to an appropriate OSI Standard and, where means of access do not conform to an appropriate OSI Standard, the reason why those means of access cannot at that time so conform.
- 40A.4 Where access to a Relevant Service is provided by means which do not conform to an OSI Standard the Licensee shall ensure that access to that Service is provided on terms which are not an undue or unfair inducement to any person who wishes to obtain such access in conformance to an OSI Standard to obtain such access by other means.
- 40A.5 Nothing done in any manner by the Licensee shall be regarded as undue or unfair inducement if and to the extent that the Licensee is required to do that thing in that manner by or under any provision of this Licence.
- 40A.6 For the purposes of this Condition, means of access shall be deemed to conform to an OSI Standard when those parts of the means of access to which the OSI Standard applies conform to that OSI Standard.
- 40A.7 In this Condition:

“OSI Standard” means any standard or rule which supports capabilities described in the International Standards Organisation’s - Open Systems Interconnection - Basic Reference Model and which is specified by the Director for the purposes of this Licence and described in a list kept for the purpose by him and made available by him for inspection by the general public, and is not removed by him from that list; and

“Relevant Applicable System” means that part of any of the Applicable Systems (other than a fixed link) which is used for the purpose of providing the Relevant Service concerned, but only to the extent that it is so used.

CONDITION 41

STATUTORY TESTING

- 41.1 If the Licensee carries out any test or assessment of any telecommunication apparatus for any person for the time being appointed under section 25 (1) of the Act, then unless the Director agrees otherwise it shall take all reasonable steps to ensure that no information with respect to any telecommunication apparatus which has been obtained in the course of or for the purpose of any such test or assessment shall be disclosed to any person including the Licensee's employees and agents except:
- (a) with the consent of:
 - (i) the Director;
 - (ii) the producer or supplier of that apparatus; or
 - (iii) the person who requested the Licensee to carry out that test or assessment;
 - (b) to the extent necessary to enable the Licensee to carry out any such test or assessment and report on it to the person for whom it was carried out; or
 - (c) to the extent necessary for the purpose of managing persons conducting any such test or assessment.
- 41.2 No person engaged in any such test or assessment shall (except to the extent agreed by the Director) be answerable in a way which requires disclosure of information of the kind referred to in paragraph 41.1, to anyone engaged in the activities of running telecommunication systems or the production or supply of telecommunication apparatus other than the Licensee's board of directors or a member of it or a person answerable directly to that board or a member of it.

CONDITION 41A

CONFIDENTIAL INFORMATION

41A.1 The Licensee shall:

- (i) as soon as it enters into discussions with an Operator with a view to entering into an Agreement with that Operator, offer to enter into a confidentiality agreement (the "Confidentiality Agreement") with that Operator which contains the minimum provisions specified in paragraph 41A.2; and
- (ii) as soon as it offers to enter into an Agreement, offer to include such minimum provisions in that Agreement.

41A.2 The minimum provisions referred to in paragraph 41A.1 are provisions which achieve the following objectives:

- (a) that each Party keeps (and uses its reasonable endeavours to ensure that its officers, employees, servants, agents, professional advisers and Associates keep) all Confidential Information relating to the other Party confidential, takes all practicable steps to prevent that Confidential Information from being disclosed or made public to any third party, and uses that Confidential Information solely for the purposes for which it was disclosed;
- (b) that each Party exercises no lesser degree of care of the Confidential Information relating to the other Party than would a reasonable person with the knowledge of the confidential nature of that Confidential Information, and exercises no lesser degree of care or security in relation to that Confidential Information than it applies to its own Confidential Information which is of an equivalent nature;
- (c) that each Party restricts disclosure of Confidential Information relating to the other Party solely to those persons to whom disclosure is necessary and limits use of that Confidential Information to the purpose for which it was disclosed; and
- (d) that neither Party shall be in breach of the Confidentiality Agreement or Agreement, as the case may be, to the extent that disclosure of Confidential Information relating to the other Party is:
 - (i) authorised in writing by that other Party, and disclosure is within the scope of that authority;
 - (ii) made to a contractor, Associate or agent subject to the contractor, Associate or agent undertaking to comply with obligations of confidence equivalent to those contained in the Confidentiality Agreement or Agreement, as the case may be;

(iii) made to an Emergency Organisation in connection with an Emergency; or

(iv) properly made pursuant to this Licence or the relevant Operator's Licence or a statutory or other regulatory obligation (including, without limitation, any obligation imposed by the rules of any recognised stock exchange) or pursuant to any order of a competent court or tribunal.

41A.3 An offer pursuant to paragraph 41A.1 (i) or (ii) ("a relevant offer") shall not be conditional on the acceptance by the Operator of the inclusion in that Confidentiality Agreement or Agreement, as the case may be, of any other terms and conditions whether relating to Confidential Information or otherwise. For the avoidance of doubt, it is hereby declared that provided the Licensee has made a relevant offer, the Licensee shall be entitled to agree terms in a Confidentiality Agreement or Agreement, as the case may be, which are additional to, or differ from, the terms of the relevant offer.

41A.4 In this Condition:

"Agreement" means any agreement entered into between the Licensee and the Operator under Condition 13 for the provision of one or more Standard Services;

"Associate" has the meaning given to it in Condition 50;

"Confidential Information" means any information, in whatever form, which, in the case of written or electronic information, is clearly designated as confidential, and which, in the case of information disclosed orally, is identified at the time of disclosure as being confidential or is by its nature confidential, but excluding any information which:

- (a) enters the public domain otherwise than by reason of breach of the relevant Confidentiality Agreement or Agreement, as the case may be;
- (b) is previously known to the relevant one of the Licensee or the Operator at the time of its receipt;
- (c) is independently generated or discovered at any time by the relevant one of the Licensee or the Operator; or
- (d) is subsequently received from a third party without any restriction on disclosure;

"Operator" has the meaning given to it in Condition 16B;

"Interested Parties" has the meaning given to it in Condition 16B; and

"Party" means a party to an Agreement or a Confidentiality Agreement.

CONDITION 42

LIMITATIONS ON INTEGRATED WIRING SITUATED ON SERVED PREMISES

42.1 The Licensee shall not after 31 December 1985 except:

- (a) in accordance with guidelines determined by the Director; or
- (b) in accordance with a contract or arrangement made on or before that date; or
- (c) where the structure in which the line is to be installed has been designed before that date in a way which envisages the installation of lines otherwise than in accordance with this paragraph; or
- (d) where the Director agrees;

install on any Served Premises any line comprised or to be comprised in any of the Applicable Systems in such a manner that relevant operations (within the meaning of section 20 of the Act) cannot be carried out in relation to wires or cables comprised in any other system (whether because that line is installed within a shared casing or coating or otherwise) situated on the same Served Premises independently of any such operations carried out in relation to any of the Applicable Systems on those Premises.

42.2 Subject to any guidelines determined by the Director for the purpose, where the Licensee has at any time installed any apparatus in a manner which would, if it had been installed at a time when paragraph 42.1 was in force, have contravened paragraph 42.1, it shall (except if the Director agrees otherwise) if requested by the person occupying the Served Premises in question who wishes the other system to be run by a person other than the Licensee and to whom the Licensee supplies telecommunication services by means of any of the Applicable Systems so installed install such additional apparatus comprised in the Applicable Systems as will permit relevant operations to be carried out in relation to so much of the previously installed apparatus as does not form a part of any Applicable System by such a person.

42.3 Paragraph 42.2 shall take effect on 31 March 1985 or such other date as the Director may determine.

42.4 In this Condition "line" has the same meaning as in Condition 43.3 (a).

CONDITION 43

WIRING ETC. NOT FORMING PART OF THE APPLICABLE SYSTEMS

43.1 The Licensee shall make any telecommunication apparatus to which this Condition applies but which is not part of any of the Applicable Systems available to any person ("the User") wishing to use it in the running of any telecommunication system:

- (a) in the case where the Licensee retains ownership or control of that apparatus, upon charges, terms and conditions no less favourable to the User than would apply for the use of the apparatus if:
 - (i) the Licensee ran the system in which it is comprised;
 - (ii) the Licensee or any of its Wholly Owned Subsidiaries provided Maintenance Services in respect of such system; or
 - (iii) the Licensee or any of its Wholly Owned Subsidiaries had supplied all or any of the other telecommunication apparatus so comprised; or
- (b) in the case where the Licensee does not retain ownership or control of that apparatus, at a reasonable capital charge having regard to the charges, terms and conditions which would have applied if it had retained ownership or control of that apparatus;

but, if it is impossible to establish a reasonable estimate of the charges, terms and conditions in accordance with sub-paragraph (a) or (b), on such reasonable charges, terms and conditions as may be agreed between the Licensee and the User.

43.2 The Licensee shall on reasonable charges, terms and conditions permit the User of any telecommunications apparatus to which this Condition applies and which remains in the Licensee's ownership or control to carry out, or have carried out on his behalf, any operation in relation to it which is reasonably necessary to enable him to use it for the purpose of running the telecommunication system in which it is comprised; but this paragraph shall not apply to any apparatus which is installed together with apparatus comprised in the Applicable Systems in such a manner that Maintenance Services cannot be carried out in relation to it independently of such operations carried out in relation to the Applicable Systems (whether because it is installed in a shared casing or coating or otherwise).

43.3 The telecommunication apparatus to which this Condition applies is:

- (a) any line, that is to say, any wire, cable, tube, pipe or other similar thing (including its casing or coating) which is designed or adapted for use in connection with the running of a telecommunication system together with any plug, socket or any other connecting apparatus; and

- (b) any structure, pole or other thing in, on, by or from which any such line is installed, supported, carried or suspended;

installed on premises occupied by the User.

CONDITION 44

LIMITATIONS ON CERTAIN MAINTENANCE ARRANGEMENTS

- 44.1 If any Limited Maintenance Telecommunication System or Limited Maintenance Telecommunication Apparatus is or is to be supplied by the Licensee or any of its Wholly Owned Subsidiaries it shall take all reasonable steps to ensure that customers are notified that the Licensee will provide Maintenance Services at charges and on terms and conditions on the same basis irrespective of who supplies the System or Apparatus.
- 44.2 Except insofar as the Director may otherwise agree in writing and without prejudice to Condition 37, the Licensee shall in respect of any Limited Maintenance Telecommunication System or any Limited Maintenance Telecommunication Apparatus which the Licensee is obliged under Condition 4 to maintain:
- (a) publish in the manner and at the time specified in Condition 16.3 a notice specifying, or specifying the method that is to be adopted for determining, the charges and other terms and conditions on which it offers to provide Maintenance Services in relation to each description of it separately identifying the charges for Pre-Maintenance Inspection; and
 - (b) where it provides Maintenance Services in respect of any such System or Apparatus, supply those Services at the charges and on the other terms and conditions so published and not depart therefrom.
- 44.3 Nothing in this Condition prevents the Licensee or any of its Wholly Owned Subsidiaries from reimbursing a person to whom any telecommunication system or apparatus is supplied by it for the charges for any Maintenance Services which the Licensee or such Subsidiary is obliged, or reasonably believes that it is obliged, to provide in its capacity as supplier of that system or apparatus, including work undertaken pursuant to or arising out of the contract for its supply, notwithstanding that it does not provide such reimbursement to a person to whom a system or apparatus is supplied by another person.

CONDITION 45

CONNECTION ARRANGEMENTS

- 45.1 Except with the consent of the Director the Licensee shall not connect nor permit to be connected any Relevant Terminal Apparatus to any of the Applicable Systems on Served Premises except by means of Network Termination and Testing Apparatus.